

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

JOHN BARTHELOW CLASSEN

Appeal **2009-004501**
Application No. **10/081,705**
Technology Center **2100**

COMPUTER ALGORITHMS AND METHODS FOR PRODUCT SAFETY

Examiner: E. P. Leroux
Art Unit: 2161

REQUEST FOR REHEARING

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Attorney Docket: CLASSEN=6A

Date: October 25, 2010

On August 23, 2010, the Board issued a decision in the present appeal.

Appellant is filing the present request for rehearing, pursuant to 37 C.F.R. § 41.52, to request that the decision be withdrawn as having been prematurely issued and that an oral hearing be scheduled before the Board, in light of the timely filing of a Reply Brief, and Request for Oral Hearing, and other papers, with a certificate of mailing under 37 C.F.R. § 1.8(a) on August 1, 2008.

Under 37 C.F.R. § 41.52, a request for rehearing must state with particularity the points believed to have been misapprehended or overlooked by the Board. The oral hearing fee was paid on March 31, 2008, along with an informal request for oral hearing provided in the appeal brief. Then, on August 1, 2008, Appellant's counsel timely mailed, using the certificate of mailing procedure, a reply brief, transmittal letter, return post card, two declarations and accompanying exhibits, and a separate request for oral hearing. However, the PTO never received those papers. Consequently, the Board issued its decision without having reviewed or considered the information in the reply brief and the accompanying papers, or Appellant's remarks at an oral hearing. ‘

Due to the mistakes of Appellant's counsel, and the failure of Appellant's counsel to notify Appellant Classen of those mistakes until after the Board's decision was issued, Appellant believes that counsel's errors and inaction should not be held against him. Accordingly, Appellant is seeking to have the August 1, 2008, papers accepted as having been timely filed, and the decision withdrawn.

Appellant Classen is submitting on even date herewith, a copy of which is attached hereto as Exhibit 1 to Request for Rehearing, a petition requesting that those papers be entered as having been timely filed on August 1, 2008. For the reasons set forth in detail in the accompanying petition, Appellant establishes ground for the requested relief of 1)

accepting the reply brief, request for oral hearing, and the accompanying papers as having been timely filed on August 1, 2008; 2) withdrawing the Board's Decision of August 23, 2010; and 3) returning the file to the Board for consideration of the reply brief and scheduling of an oral hearing. If that petition is granted, Appellant requests that the Board decision be withdrawn, and an oral hearing be scheduled as requested.

For the reasons presented herein and in the accompanying petition, the entire contents of which are hereby incorporated by reference, granting of this request for rehearing and withdrawal of the decision of August 23, 2010, as having been prematurely issued are hereby earnestly solicited.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
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